



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Matthew T. Sanderson, Esq.
Rachel E. Goldstein, Esq.
Caplin & Drysdale, Chartered
One Thomas Circle, NW, Suite 1100
Washington, DC 20005

OCT 06 2016

RE: MUR 6905

Dear Mr. Sanderson and Ms. Goldstein:

On November 20, 2014, the Federal Election Commission ("Commission") notified your clients, Lawrence Lessig and Mayday PAC, Inc., and Mark McKinnon in his official capacity as treasurer (collectively, "Respondents"), of a complaint alleging violations of the Federal Election Campaign Act of 1971, as amended. On September 23, 2016, based upon the information contained in the complaint, and information provided by the Committee, the Commission decided to exercise its prosecutorial discretion to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on September 23, 2016.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). A copy of the dispositive General Counsel's Report is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Lisa J. Stevenson
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
General Counsel's Report

2016 AUG 29 PM 2:13

BEFORE THE FEDERAL ELECTION COMMISSION

2016 AUG 29 PM 3:11

**ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT**

MUR: 6905

Complaint Receipt Date: November 20, 2014

Response Date: January 16, 2015

Respondents: Lawrence Lessig; CELA
Mayday PAC and Cyrus Patten
in his official capacity as
treasurer¹ (collectively
the "Committee")

EPS Rating:

Alleged Statutory/

52 U.S.C. §§ 30120(a)(3), (c)(2), (d)(2)

Regulatory Violations:

11 C.F.R. §§ 110.11(a), (b)(3), (c)(2), (4)

The Complaint alleges that the Committee,² an independent-expenditure only political committee, violated the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations by distributing a series of television advertisements, radio advertisements, and mail pieces that did not comply with the Commission's disclaimer requirements. Specifically, according to the Complaint, the written and oral portions of the televised advertisements omitted language stating that Mayday PAC "is responsible for the content of this advertising," while the radio advertisements also failed to include the language "not authorized by any candidate or candidate's committee,"³ and some of the radio advertisements did not include Mayday PAC's street address, phone number, or web address, in violation of 52 U.S.C. § 30120(a)(3), (d)(2) and 11 C.F.R. §§ 110.11(b)(3), (c)(4). The Complaint finally alleges that the disclaimers on the mailers failed to state that they were not authorized by any candidate or candidate's committee and were not contained within a printed

¹ Mark McKinnon was the Committee's treasurer during the time period at issue. Mr. Patten is currently the Committee's treasurer.

² The Complaint states that the Committee was founded by Lessig.

³ The advertisements apparently said "not affiliated with any candidate or campaign."

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box, as required by 52 U.S.C. § 30120(c)(2) and 11 C.F.R. § 110.11(c)(2)(ii). Respondents argue that the advertisements all include language stating that they were paid for by Mayday PAC, the contents of the advertisements included enough information so that the public would not have been misled as to who had sponsored them, and the Committee took "prompt corrective action" by developing stricter internal controls to ensure compliance.


Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating and the other circumstances presented, we recommend that the Commission dismiss the allegations consistent with the Commission's prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all respondents and send the appropriate letters.

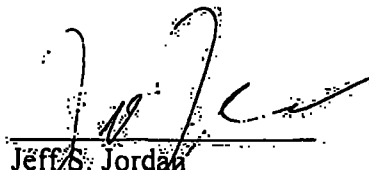
Daniel A. Petalas
Acting General Counsel

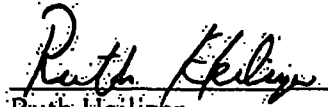
Kathleen M. Guith
Acting Associate General Counsel
for Enforcement

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BY:


Stephen Gura
Deputy Associate General Counsel
for Enforcement


Jeff B. Jordan
Assistant General Counsel
Complaints Examination
& Legal Administration


Ruth Heilizer
Attorney
Complaints Examination
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